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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.299 OF 2002

Shahid Sultan Khan
r/at Kaniz Apartment, 2nd floor
Amrut Nagar, Mumbra, Thane ... Appellant

V/s.

The State of Maharashtra ... Respondent

Ms.R.B. Amrolia and Y.N. Katpitia for Appellant
Dr.F.R. Shaikh, APP, for Respondent

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **OCTOBER 4, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The Appellant, who was the original accused No.1, has challenged the judgment and order of the adhoc Additional District and Sessions Judge, Thane. He has been convicted under section 232 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. He has also been convicted under section 235 of the Indian Penal Code and sentenced to suffer imprisonment for 10 years. In addition, a fine of Rs.50,000/- has been imposed on each count on the appellant.

2. The case of the prosecution is that the Thane Crime Branch was informed on 1.5.2001 that illegal manufacturing of Indian coins was being carried out in

Kaniz Apartment in Mumbra. The premises were raided and the appellant and the original accused No.2 were found in the premises on that day. According to the prosecution, they were in the process of manufacturing counterfeit coins of the denomination of Rs.5/-. The equipment and machinery which was allegedly being used for counterfeiting the coins was seized from the flat. The coins found in the flat were also seized. The raw material which was in a molten state in a vessel on the stove was also seized. A panchanama was drawn up and both the accused were taken to the police station where a complaint was lodged. The seized equipment was taken to the police station from the flat. Further investigations were carried out. According to the prosecution, the accused demonstrated the process which they used for making the coins. Besides the two accused who were charged, two other persons who were similarly charged have been discharged by the trial Court. The trial Court on an appreciation of evidence led before it, has concluded that both the accused were guilty of the offences for which they were charged. The present appeal has been filed only by accused No.1.

3. The prosecution has examined 12 witnesses in support of its case against the accused. PW3, 5 and 10 are the police officers involved with the seizure of the equipment and coins from the flat in Kaniz Apartment. PW3 is the complainant. PW6 is the panch witness to the

seizure panchanama which is at Exhibit 25. On 3.5.2001, the prosecution directed the accused to demonstrate the process used by them for making the coins. The panchanama of this demonstration has been proved by PW1 who was a panch witness. PW2, who was also a panch witness has turned hostile. PW4 is also a panch witness who has deposed regarding the demonstration for making counterfeit coins. He has proved the panchanama at Exhibit 11. PW7 and PW8 are the neighbours residing in the flats adjacent to the one where the accused were allegedly manufacturing coins. PW9, a dealer of chemicals for electroplating has deposed about the purchases made by accused No.2 from him. He has not mentioned anything about accused No.1, the present appellant. PW11 and PW12 are the witnesses in respect of the role played by accused Nos.3 and 4 who have been discharged by the trial Court.

4. Before we analyse the evidence led before the trial Court, it would be necessary to bear in mind the provisions under which the appellant has been charged. Section 232 of the Indian Penal Code reads as follows:

> 232. Counterfeiting Indian coin: Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, Indian coin, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The word "counterfeit" has been defined under section 28 of the Indian Penal Code thus:

> 28. "Counterfeit": A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.
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> Explanation 1: It is not essential to counterfeiting that the imitation should be exact.
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> Explanation 2: When a person causes one thing to resemble another thing and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.

The other section under which the appellant has been charged is section 235 of the Indian Penal Code, which reads as under:

> 235. Possession of instrument or material for the purpose of using the same for counterfeiting coin: Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;
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> If Indian coin: - And if the coin to be counterfeited is Indian coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

5. Therefore, the basic requirement for the prosecution to succeed against the accused in respect of counterfeiting coins is that the witnesses examined by the prosecution must speak of the manufacture of one coin resembling a genuine one. The explanation of the section provides that the imitation need not be exact. A presumption can also be drawn under Explanation 2 of section 28 that a person is counterfeiting coins when he causes one coin to resemble another so closely that the person intended to practice deception or knew it would be likely to cause deception. Section 232 prescribes the punishment for counterfeiting Indian coins. Section 235 prescribes the punishment for a person who is in possession of any instrument or material used for counterfeiting coins. Thus, a conviction under section 232 or 235 would be maintained only if the prosecution satisfactorily proves the ingredients of section 28. Mere possession of equipment need not necessarly result in a conviction if the prosecution fails to prove that the equipment was used to manufacture counterfeit coins. The prosecution must establish that the coins manufactured resemble the original. It must also establish that there is an intention to deceive, or the knowledge that deception would be caused by such resemblance. We will therefore, have to determine whether the prosecution has substantiated its case against the accused having regard to the scope of the aforesaid sections.

6. A perusal of the evidence of the complainant, PW3, indicates that he and others in the raiding party alongwith two panchas raided the flat in Kaniz apartment on 1.5.2001. He has deposed that information was received through constable Yeronkar that a person named Shaikh was manufacturing counterfeit coins in this flat. He has deposed that when they entered the flat, they found a molten mixture being heated by accused No.2 for manufacturing the coins. They found 140 coins of Rs.5/- denomination. The machines including the die and the coins were seized by the police. They found a steel cabinet in the bedroom. 360 coins of Rs.5/- denomination were seized from this cabinet. The police then seized all the other articles including the stove, utensils, the raw material, copper wire and the plastic bucket with the raw material from the premises. The witness has identified some of the articles which were seized. Significantly, there is no mention in the evidence of this witness that the coins found in the premises resembled genuine coins of Rs.5/- denomination.

7. PW5 is the other police official who was attached to the Crime Branch, Thane and was included in the raiding party. He has corroborated the evidence of PW3 regarding the existence of the equipment used for manufacturing the coins in the flat in Kaniz apartment. He has spoken of freshly manufactured Rs.5/- coins being

found at the site; 140 in the front room, 360 in a rexin bag in a cabinet in the bedroom. He has spoken about the articles and equipment being seized in the presence of the panchas and sealed. He has also stated that the coins were sealed. In the crossexamination, this witness has stated that the coins seized from the flat were put in a plastic bag, the bag was tied and a label was affixed on that bag. He has admitted that there was no label on article 5, that is, the coins seized from the scene of offence. He has spoken about the coins which were found in the rexin bag being transferred to a cotton bag, article 18. Again, this witness does not speak of the coins found in the flat resembling the genuine coins.

8. PW10 is the Investigating Officer and a member of the raiding party. He has deposed that the premises were raided after two counterfeit coins were procured. He has stated that accused No.1 opened the door of the flat. This witness has spoken about a die with an arrangement to emboss 11 coins at a time being found in the premises. 140 coins were found in the frontroom. He has then spoken of 25 dies being seized. He has then deposed that they found a vessel containing an amalgam of aluminium and lead being melted with a ladle in the vessel. He has described the other material found in the flat. Iron filings were also found in the flat besides the 360 coins of Rs.5/- denomination which were

in the bedroom. This witness also does not make any reference to the resemblance of the coins being manufactured with genuine ones.

9. The panch witnesses who were examined by the prosecution have not stated that the articles seized including the coins were sealed in their presence. The seizure panchanama which is on record also does not indicate that the coins which were seized from the premises had been sealed by the raiding party. There is no evidence on record to indicate that these coins which had been seized were the same as those which were exhibited in Court. There is therefore a doubt as to whether coins exhibited in the Court were the same as the coins seized since the coins were not sealed.

10. The neighbours who have been examined, PW7 and PW8, have also not shed any light on the case of the prosecution and their evidence is not really helpful to the prosecution.

11. We are therefore left with the testimony of the police personnel involved with the raid conducted on the flat in Kaniz apartment. All that is brought forth in their testimonies is that accused Nos.1 and 2 were found on the premises. They were manufacturing coins. Molten raw material consisting of aluminium and iron filings was found in a utensil on a stove. A label was also

found on that utensil. Dies in which several coins could be pressed at the same time were also found. Besides this, coins of Rs.5/- denomination were found in the premises. However, there is absolutely no evidence on record to show that the coins which were found in the premises either resembled the genuine coins as required under section 28 or that the accused intended to practise deception by manufacturing those coins. Undoubtedly, it is not essential that the imitation coin should be an exact replica of a genuine one. However, the minimum that would be required for prosecution to establish a charge under section 232 and 235 is that it establishes that the coins seized resembled the original and that the resemblance is such that it would deceive a person or that the accused knew that if the coin is used it would be likely to deceive a person. These basic ingredients for proving an offence punishable under sections 232 and 235 are absent in the present case. Merely by seizing the equipment and the coins found in the flat, the prosecution cannot establish its case against the accused. There cannot be a presumption that the equipment was being used for counterfeiting coins or that the coins found in the flat resemble genuine coins. Unless there is intrinsic evidence on record to show that the coins indeed resemble genuine coins, it is difficult to accept the case of the prosecution.

12. The prosecution has produced on record through

PW10 the certificate/report issued by the Engraving Department Government of India Mint on 23.7.2001. This report shows that the coins which were seized had been examined with respect to their shape, size, thickness and finishing of the design and it was found that they were moulded coins whereas the mint coins are struck coins. There is also a report indicating that the composition of the metals used in the coins seized was different from the one for genuine coins. Genuine coins contain copper and nickel whereas the coins which were seized contained an amalgamation of lead, tin and antimony. Assuming that what has been stated in the reports is correct, it would still be necessary for the prosecution to establish that these moulded coins which were seized resembled genuine coins. It would also be necessary for the prosecution to establish that the coins were so similar to the original coin of Rs.5/- denomination that they would be likely to cause deception in the minds of the public. This evidence not being available before us, we are unable to accept the case of the prosecution.

13. Therefore, the lack of evidence to prove the prosecution’s case, entitles the appellant to acquittal. The conviction and sentence under section 232 and 235 of the Indian Penal Code is set aside. The appellant who is in jail be released forthwith, if not otherwise required in law.